

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARIO UBINA,

Plaintiff,

v.

O. ONYEJE,

Defendant.

No. 1:21-cv-01623-NONE-SKO (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DENYING
MOTION TO PROCEED *IN FORMA*
PAUPERIS

(Doc. Nos. 3, 8)

Plaintiff Mario Ubina is a state prisoner proceeding *pro se* in this civil rights action brought under 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On November 10, 2021, the assigned magistrate judge issued an order to show cause why plaintiff's motion to proceed *in forma pauperis* ("IFP") should not be denied because plaintiff had sufficient funds to pay the filing fee. (Doc. No. 5.) Plaintiff filed a response to the order to show cause on November 29, 2021. (Doc. No. 6.) Therein, plaintiff does not deny that he had sufficient funds to pay the filing fee when he filed his motion, but that he had since then spent the money. (*Id.* at 1.)

On December 2, 2021, the magistrate judge issued findings and recommendations, recommending that plaintiff's motion to proceed *in forma pauperis* be denied. (Doc. No. 8.) The magistrate judge found that plaintiff had sufficient funds to pay the filing fee when he filed his motion to proceed IFP, and that plaintiff had failed to show "that he spent the funds on

1 ‘necessities’ while . . . incarcerated, i.e., while his basic necessities have been covered by the
2 State of California.” (*Id.* at 2 (citing *Lumbert v. Illinois Dep’t of Corr.*, 827 F.2d 257, 260 (7th
3 Cir. 1987)).) The findings and recommendations were served on plaintiff and provided him 14
4 days to file objections thereto. (*Id.*)

5 Plaintiff filed objections on December 20, 2021. (Doc. No. 9.) In those objections
6 plaintiff again does not dispute that he had sufficient funds to pay the filing fee associated with
7 the bringing of this action when he filed his motion. (*See generally id.*)

8 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
9 *de novo* review of this case. Having carefully reviewed the file, including plaintiff’s objections,
10 the court finds the findings and recommendations to be supported by the record and proper
11 analysis. According to his inmate trust account statement (Doc. No. 3 at 4), plaintiff had
12 sufficient funds to pay the filing fee when he filed his motion to proceed IFP, and he has not
13 shown that he has since spent the funds on necessities while incarcerated.¹ Therefore, the
14 granting of IFP status is not warranted Here.

15 Accordingly,

- 16 1. The findings and recommendations issued on December 2, 2021 (Doc. No. 8) are
17 adopted in full;
- 18 2. Plaintiff’s motion to proceed *in forma pauperis* (Doc. No. 3) is denied;
- 19 3. Within 30 days of the date of service of this order, plaintiff shall pay the \$402 filing
20 fee in full; and,
- 21 4. Failure to pay the filing fee within the time provided will result in dismissal of this
22 action.

23 IT IS SO ORDERED.

24 Dated: **December 27, 2021**

25 
UNITED STATES DISTRICT JUDGE

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27 ¹ Plaintiff suggests generally that he may have spent some of his funds on items “to help recover
28 his health” (Doc. No. 9 at 2) but does not provide any details about the nature or amount of those
expenditures.